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Chairman: Mr. LEHMANN (Denmark)

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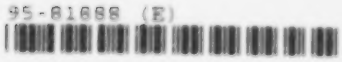

The meeting was called to order at 3.15 p.m.

AGENDA ITEM 141: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SEVENTH SESSION (continued) (A/50/10 and A/50/402)

1. Mr. MORSHED (Bangladesh) made a general observation that, while offering a useful point of departure in certain instances, the various references made to municipal law during the discussion on the development of international law did not reflect the relationships between international law and the domestic law of many countries. The example of Bangladesh, which had incorporated crimes regarded as terroristic into its criminal justice system through the learning experience of participating in multilateral conferences and subsequently through its accession to international conventions, illustrated how international law-making was frequently the precursor of domestic law reform. The International Law Commission should therefore have regard to the possibility of its work helping domestic law systems adapt to the ever increasing complexities of international life.

2. His delegation believed that the technical resources available to the Commission were insufficient for the successful fulfilment of its mandate on particular topics. That problem, attributable to many factors, was aggravated by the gentlemanly pace of the Commission's work, which could be rendered out of date due to the failure to keep up with technological advances. Changes in the Commission's working methods and the facilities for accessing state-of-the-art developments in select fields therefore appeared necessary.

3. Concerning chapter II of the Commission's report on the draft Code of Crimes against the Peace and Security of Mankind, his delegation appreciated the rationale behind an irreducible list of "core crimes" that also seemed to animate the open-ended Working Group on the draft statute for an international criminal court. It felt, however, that the relegation of apartheid or institutionalized racial discrimination was retrogressive. The germ of genocide could be discerned in the historical phenomenon of racial discrimination; hence, excluding that crime from the list, weakened the legal defences against it. Furthermore, by its very nature, racial discrimination readily leant itself to systematic state and institutional patronage. He therefore suggested that the crime of apartheid should be restored to the list of "core crimes", while broadening the definition to cover institutionalized racial discrimination.

4. His delegation also supported the restoration of the crime of wilful and severe damage to the environment as a core crime, since the likelihood of such damage occurring was not so remote as to be discounted. Furthermore, it was only by treating such damage as a distinct crime that the institutional weaknesses inherent in international society in that respect could be overcome and the municipal practice of concurrent indictments avoided.

5. Some delegations had emphasized the need for precision in drafting, especially in regard to the draft Code of Crimes against the Peace and Security of Mankind. That precision was necessary for the protection of the rights of accused persons in municipal criminal law systems. At the municipal level, however, it was backed by rules of evidence that enforced discovery and

permitted interrogation. At the international level, the procedures differed and greater opportunities existed for the obstruction of justice through the corruption or suppression of evidence. The search for perfection in drafting was therefore misplaced until procedures could be uniformly assured.

6. The consideration of chapter IV on State responsibility, had provoked considerable debate over the notion of "State crimes". Although it had no ready answer to the various objections posed, his delegation recognized that such a notion could not be easily dismissed in so far as responsibility for a crime could not be systematically attributed to an individual. It commended the observation contained in paragraph 269 of the report that "it was hardly admissible continually to go back on past decisions".

7. Part three of the draft articles, on the settlement of disputes, was of great interest, particularly with regard to the establishment of a stage of compulsory negotiations, which probably offered the most promising route to the amicable settlement of disputes. In a broader context, the Commission could examine the legal consequences of the persistent denial of negotiations and ways of escaping from the resulting impasse. The institution of compulsory third party proceedings was a prerequisite for the democratization of international society and rendered admissible the consideration of "countermeasures".

8. Concerning international liability, his delegation approved of the adoption of articles A, B and D and noted that article C remained a working hypothesis. It also welcomed the reaffirmation of Principle 21 of the Declaration of the United Nations Conference on the Human Environment and Principle 2 of the Rio Declaration on Environment and Development. Portions of the commentary, however, were misleading and the references to the standard of due diligence were misplaced and misconstrued. Due diligence was an objective test and could not be used to amend or abridge the rights of States.

9. His delegation shared the view of the Special Rapporteur, who explained that the most appropriate remedy for harm to the environment was the restoration of the environment. It also urged the Commission to recognize that damage to the environment was becoming increasingly irreversible and to allow that recognition to shape both the regime of liability and the means of reparation. Lastly, it hoped that the topic of international liability would be treated uniformly in the domain of public international law.

10. Mr. KOLODKIN (Russian Federation) said that the Commission had made satisfactory progress in its work, especially on the two new topics, namely, State succession and its impact on the nationality of natural and legal persons, which had acquired particular importance for his country since the disappearance of the Soviet Union, and the law and practice relating to reservations to treaties. He wished to stress, however, that serious problems remained to be solved. In particular, the draft Code of Crimes against the Peace and Security of Mankind and the draft articles on State responsibility, which the Commission regarded as priorities, gave rise to considerable difficulties.

11. Concerning the draft Code, it appeared necessary to question the relationships between the work carried out in that domain and the work on the draft statute for an international criminal court. When it was submitted to the

General Assembly in 1994, the draft statute had been an instrument of procedural law; together with the draft Code, which came within the realm of positive law, it formed the basis for a penal law. The Commission's recent work had modified that context by endowing the draft statute with a character that came more within the realm of positive law. His delegation therefore believed that the approach to the drafting of the Code should be reviewed and that attention should be focused on the crimes to be included therein, rather than on the definition of the crimes which fell within the jurisdiction of the court.

12. Concerning the draft articles on State responsibility, it appeared that it would be difficult for the Commission to reach agreement on the concept of "State crime" during the current session. On the other hand, it was on the verge of completing its work on delicts. The proposals of the Special Rapporteur on the institutional aspect of crimes did not fully satisfy his delegation, which also had reservations concerning the provisions on the possibility of different United Nations organs determining the existence of a crime and the number of votes necessary for the organs concerned to take a decision. In that regard, it endorsed the remarks contained in paragraphs 306, 307 and 309 of the Commission's report.

13. Although it regarded as justified the distinction between delicts and crimes on the basis of their gravity, his delegation believed that the Commission could not draft the articles on State responsibility satisfactorily unless it decided not to include the concept of responsibility for crimes and focused primarily on completing its work on the question of responsibility for delicts.

14. Such observations led to more general questions concerning the Commission's procedures and working methods and means of enhancing its efficiency. The issue should be considered seriously and the possibility of establishing a working group of the Sixth Committee to perform that task should be envisaged.

15. Mr. AKL (Lebanon) said he welcomed the progress achieved with regard to the draft Code of Crimes against the Peace and Security of Mankind. He approved of the decision to limit the list of crimes to offences whose characterization as crimes against the peace and security of mankind was difficult to challenge, which should facilitate the establishment of a wider consensus among States. However, he appreciated the reservations expressed by some delegations and hoped that such restrictions would be temporary in that the draft Code would be enhanced by being comprehensive.

16. His delegation hoped that intervention and colonial domination and other forms of alien domination would be included in the draft Code. It was also in favour of the definition and inclusion of the crime of "institutionalized racial discrimination" and the establishment of a working group to examine the issue of wilful and severe damage to the environment.

17. It would be appropriate to include in the Code a mechanism for the progressive addition of crimes on which a broad international consensus might one day emerge. It would also be necessary to harmonize the provisions of the text, particularly the definition of crimes, with those of the draft statute for

an international criminal court in order to avoid differences or contradictions which might interfere with the functioning of the future court.

18. With regard to article 15, which dealt with the crime of aggression, this delegation supported the text adopted by the Commission on first reading, which was based on the definition adopted by the General Assembly in its resolution 3314 (XXIV) of 14 December 1974. With regard to article 19, it supported the proposal of the Special Rapporteur to include the crimes of complicity and the attempt to commit genocide in the definition of genocide. Furthermore, it felt that the last subparagraph ("All other inhumane acts") of draft article 21, concerning crimes against humanity was too imprecise to be included in a criminal code. Lastly, the words, "the establishment of settlers in an occupied territory and changes in the demographic composition of an occupied territory" and "attacks against civilian populations" should be added to article 22, concerning war crimes.

19. His delegation agreed with the Special Rapporteur that a more precise definition of international terrorism must be provided with a view to including that crime in the Code and to eliminating it on a global scale. But it would be essential to include in article 24 a saving clause similar to paragraph 7 of the draft article on the crime of aggression adopted by the Commission on first reading.

20. Turning to chapter VI of the Commission's report, entitled, "The law and practice relating to reservations to treaties", he said that the legal norms regarding reservations set forth in the 1968 Vienna Convention on the Law of Treaties were generally satisfactory and corresponded to State practice. He did not approve of the position adopted by the Human Rights Committee, which tended to limit the right of States to formulate reservations in order to protect interests that they considered essential. The consent of States to be bound by treaty provisions remained a basic principle. It was for that reason that the rules concerning reservations set forth in the Vienna Conventions of 1968, 1978 and 1986 could not be called in question, even if it sometimes seemed essential to complement or clarify them.

21. It seemed necessary, as the Commission had suggested, to adopt guidelines and model clauses on reservations in the form of draft articles which would serve as a guide to States and international organizations on that matter. The decision with regard to the form which the results of the Commission's work would take should be left to a later stage. Lastly, it seemed appropriate to change the title of the topic to "reservations to treaties", as the Special Rapporteur had proposed.

22. With regard to the Commission's programme of work, his delegation felt that the recommendations in chapter VII of the report were satisfactory. In particular, it supported the recommendations to include the issue of diplomatic protection in the agenda and to begin a study of the law of the environment. The proposals for improving the rhythm and results of the Commission's work deserved to be examined with great care.

23. The CHAIRMAN said that the Committee had concluded its debate on agenda item 141.

AGENDA ITEM 142: ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT (A/50/22)

24. Mr. BOS (Chairman of the Ad Hoc Committee on the Establishment of an International Criminal Court), after briefly summarizing the history of a question which had concerned the international community for nearly half a century, said that the draft statute for an international criminal court presented by the Commission (A/49/10) had assumed even greater importance because the need for such a jurisdiction had been confirmed by the decision of the Security Council to establish ad hoc Tribunals for the former Yugoslavia and for Rwanda. At its forty-ninth session, the General Assembly had established an ad hoc committee to review the major substantive and administrative questions arising out of the draft statute prepared by the Commission (resolution 49/53) and the arrangements for the convening of an international conference of plenipotentiaries.

25. The report of the Ad Hoc Committee (A/50/22), which had held two sessions in 1994, included four parts. Since part I was self-explanatory, he reviewed the principal questions examined in part II, which was subdivided into six sections.

26. With regard to section A (Establishment and composition of the court), the members of the Ad Hoc Committee had agreed that the future court should be established by means of a multilateral treaty and that a close relationship must be ensured between the court and the United Nations, possibly by means of a special agreement. They had felt that two other questions deserved further consideration: on the one hand, the qualifications of the judges and their mode of election and, on the other, the content and method of adoption of the rules of procedure and evidence (paras. 12-28).

27. Since the principle of complementarity, which was the subject of section B, was an essential characteristic of the establishment of an international criminal court, the Ad Hoc Committee had stressed the need to consider its practical application at all stages, from the initial investigation to the enforcement of the sentence. That principle must also be examined in relation to the exercise of jurisdiction by national courts, particularly with regard to the nature of exceptions, the exercise of national competence, the authority competent to decide on such exceptions and the question of when such decisions should be made. He felt that those issues, and others, would be much easier to resolve if the scope of the court's jurisdiction was limited to a few "core crimes" (paras. 29-51).

28. In section C, the Ad Hoc Committee analysed issues relating to the jurisdiction of the court, in particular applicable law which, it was generally felt, required further consideration (paras. 52 and 53). The question of the crimes to be covered by the statute and the definition of those crimes was of unparalleled importance because it would determine the role of the future court within the international legal order, its relationship to national criminal justice systems and the support which it would receive. Nearly all the delegations had felt that genocide, serious violations of the laws and customs applicable in armed conflict, including the 1949 Geneva Conventions and crimes against humanity met the criteria for inclusion under the jurisdiction of the

court. However, there was less agreement regarding the crime of aggression and treaty-based crimes.

29. It had been suggested that a mechanism for periodic review of the list of crimes falling under the court's jurisdiction should be added to the statute so that the list would continue to meet the needs of the international community. That option would have the advantage of limiting the court's jurisdiction, at least in an initial phase, to a small number of "core crimes". With regard to the specification of crimes, it had been noted that the crimes must be precisely defined and that the constituent elements of each crime over which the court would have jurisdiction must be specified.

30. The Ad Hoc Committee had examined other issues relating to the exercise of jurisdiction, including inherent jurisdiction, the mechanisms for acceptance by States, State consent requirements and conditions for the exercise of jurisdiction, the mechanism for triggering the exercise of jurisdiction, the role of the Security Council and the statute of limitations. All of those questions, particularly the relationship that should exist between the court and the Security Council, had been considered of the greatest importance (paras. 90-127).

31. In section D (Methods of proceedings: due process), the Ad Hoc Committee had considered some extremely complex and technical issues. The discussion had made it clear that the role of the president and that of the prosecutor called for further consideration, as did the respective roles of the court and the national authorities with respect to investigation and prosecution (paras. 128-194).

32. The relationship between States parties, non-States parties and the international criminal court, which was the subject of section E, was of particular importance since the effectiveness of the court would depend largely on the cooperation of national authorities. The discussion had indicated that part VII of the draft statute and the question of concurrent treaty obligations deserved further study (paras. 195-243).

33. With regard to the budgetary aspects which were dealt within subsection F, three main trends had emerged during the debate. One trend favoured financing the court from the regular budget of the United Nations; another supported financing of the court by the States parties to its statute; yet another considered it too early to discuss budgetary matters in detail (paras. 244-249).

34. Noting that section III of the report dealt with arrangements for the convening of an international conference of plenipotentiaries and was self-explanatory, he turned to the conclusions of the Ad Hoc Committee which were reflected in section IV of the report. Although considerable progress had been made on key issues such as complementarity, jurisdiction and judicial cooperation between States and the international criminal court, further work remained to be done on the draft statute of the court. The Committee felt that discussion of issues could be combined with the drafting of texts with a view to preparing a consolidated text to be considered by a conference of plenipotentiaries. Emphasizing the importance of encouraging the broadest possible participation of States in order to ensure the effectiveness of a

future international criminal court, he encouraged as many States as possible to participate in the discussions.

35. Mr. OWADA (Japan) said that despite the reawakening of hatreds and rivalries that had remained dormant throughout the cold war, the complex problems posed by the establishment of an international criminal court should be studied responsibly and calmly. The establishment of such a body would be a revolutionary leap in the history of the codification of international law. Great care must therefore be taken to ensure that such an institution would function effectively and meet the expectations of the international community, and especially those who needed the court most.

36. Since his Government's views had already been explained in detail in document A/C.6/49/3, he would confine his remarks to a few aspects of the draft to which his delegation attached great importance: complementarity, crimes to be covered by the statute and specification of crimes; and the exercise of jurisdiction and respect for fundamental human rights.

37. The principle of complementarity was of cardinal importance to the statute because, under normal circumstances, it was safe to assume that a national judicial system was highly developed with regard to both substantive laws and the manner in which it was organized, and that it could deal with most crimes. It should be remembered that the four Geneva Conventions of 1949 and other international treaties were based mainly on the principle of cooperation among national judicial systems, a principle embodied succinctly in the phrase aut dedere, aut judicare. In addition, although the establishment of an international criminal court was anticipated by article 6 of the 1948 Genocide Convention, the supremacy of the international court was not stipulated. Saddling the international criminal court with an unrealistically ambitious role would risk jeopardizing both the universal accession of States to the statute and the court's effectiveness.

38. The jurisdiction of the court should be limited to "core crimes", such as genocide, serious violations of the laws and customs applicable in armed conflicts, crimes against humanity and crimes under the four Geneva Conventions. Those were typical crimes most likely to be committed in an armed conflict, when national judicial systems did not function properly. Crimes under article 20 should be made more specific so as to avoid any ambiguity concerning the court's jurisdiction.

39. As for the case of aggression addressed in article 20 (b), Japan did not share the view expressed by the International Law Commission; the definition given by the General Assembly in 1974 had not been formulated for the purpose of determining the criminal responsibility of an individual, and it would be difficult to prove that any one person was responsible for such aggression. In addition, if the court dealt with the crime of aggression, that would immediately raise the delicate question of the relationship between the court and the Security Council; on the one hand the utmost caution would be required in order to guard against possible inconsistencies between the judgements of the Security Council and the court; on the other hand, the court would have to maintain its independence from the Security Council.

40. Crimes of terrorism, crimes against internationally protected persons and crimes related to torture and trafficking in narcotic drugs should be left with national judicial systems.

41. Japan was sceptical about the wisdom of extending "inherent jurisdiction" on genocide to the court because the concept of inherent jurisdiction ran counter to the principle of complementarity. The mechanism proposed in article 21, paragraph 1 (b), was quite justified and there was no valid reason for expanding the number of States entitled to lodge a complaint beyond the State where the alleged crime was committed, the State of nationality of the suspect, the custodial State and the State of nationality of the victim.

42. The requirements of the principle of legality, nullum crimen sine lege, and nulla poena sine lege, must be fully respected. That was all the more important in the case of the proposed court, in whose proceedings an accused individual would be exposed to the scrutiny of the entire international community. Due process of law whether in respect of investigative procedures, rules of evidence and trial and enforcement procedures, was so fundamental that it should be stipulated as an integral part of the statute. In addition, provisions covering the applicable law and the prohibition on retroactive application should be examined further.

43. In conclusion, he suggested that in the future there should be an interval of at least one month between meetings of the Ad Hoc Committee, to allow delegations sufficient time to hold the necessary bilateral and multilateral consultations.

44. Mr. McRAE (Canada) stated that the recent tragic events which had so affected world opinion had highlighted the urgent need to proceed with the establishment of the court. Giving the example of the ad hoc international tribunals created to judge atrocities committed in the former Yugoslavia and in Rwanda, he said that their establishment by the Security Council left them open to the criticism that they could not be completely impartial and independent or completely free from political considerations. Indeed, the ad hoc status of those tribunals could also lead to jurisprudential inconsistency or to the exercise of selective justice. It would therefore be preferable to put into place a permanent, universally established and accepted body to respond to such crises in the future.

45. The fact that situations which gave rise to crimes against humanity, in the broadest sense of the term, were constantly being brought before the Security Council, created a conceptual link between the Council and the proposed court, as was clearly illustrated by the proposal to include aggression as a crime which would fall within the jurisdiction of the court. The Security Council took political decisions that had legal consequences, but that did not mean that the court could not operate in an independent and impartial manner. Nevertheless, a treaty-based court, despite having broad international acceptance, could not have the decisive short-term impact of a tribunal established by a resolution of the Security Council that was binding on all members of the United Nations. The statute of the court should therefore not only allow for jurisdiction in cases referred by the Security Council but also recognize the authority of the Council to oblige all Members of the United

Nations to cooperate with the court and require States parties to the statute of the court to bring alleged war criminals to justice. It should no longer be necessary for the Council to create ad hoc tribunals once the statute of the court had entered into force after achieving the minimum number of ratifications.

46. Since the Ad Hoc Committee had fulfilled its mandate as set out by the General Assembly, the time had come to advance to the next step in the negotiations and establish a preparatory committee to prepare a text on the statute of the court for adoption at a conference of plenipotentiaries. Sufficient time should be allotted, there should be the broadest possible representation of Member States and sessions should be shorter and concentrate on specific issues. Those issues should also be differentiated according to whether they needed further substantive discussion or were sufficiently resolved to go on to the drafting phase. The Chairman could conduct informal consultations on those questions. Some issues before the preparatory committee certainly merited further substantive discussion but it should be remembered that the main business of the Committee was to draft texts.

47. The diplomatic conference to adopt the statute of the permanent international criminal court should be held as early as possible, preferably some time in 1997. Canada expressed its gratitude to Italy for its generous offer to host the conference.

48. Mr. YAÑEZ-BARNUEVO (Spain), speaking on behalf of the European Union, welcomed the report of the Ad Hoc Committee (A/50/22) and the conclusions contained therein.

49. The European Union welcomed the increasingly active support of Member States for the establishment of an effective international criminal court, to respond to atrocities committed throughout the world. The experience of the two international ad hoc Tribunals established by the Security Council under Chapter VII of the Charter would be extremely useful in that connection.

50 The court should be a permanent and independent institution and the principle of complementarity should be clearly reflected in the statute. The crimes within the court's jurisdiction and the general rules of criminal law applicable by the court should be defined clearly. Particular attention should be paid to defending the rights of the accused and to proper standards of due process.

51. The European Union considered that the work in hand should be continued until a conference of plenipotentiaries had adopted a consolidated draft convention, for subsequent signature by Member States, and supported the recommendations of the Ad Hoc Committee, particularly those concerning future work. In that connection, it would be useful to establish a preparatory committee to deal in greater depth with the major substantive and administrative issues arising out of the draft statute.

52. The European Union was convinced that establishment of an international criminal court would help to create a more just international order, and urged as many Member States as possible to participate in that endeavour.

53. Mr. FERRARIN (Italy) said that the time had come to speed up the preparatory work and start a negotiating process which would culminate in the adoption of the statute for the international criminal court by an international conference of plenipotentiaries.

54. The court should be an independent, permanent institution, with the widest possible participation of States, and closely linked to the United Nations. It should be complementary to national systems of criminal justice; it was not intended to exclude national jurisdictions, but essentially to provide a forum for the trial of persons accused of crimes of great international concern when recourse to national jurisdiction might be unavailable or ineffective.

55. A balanced approach towards complementarity should be adopted, not only to safeguard the primacy of national jurisdiction, but also to prevent the jurisdiction of the court from becoming merely residual to national jurisdictions. Placing excessively stringent conditions on the exercise of the court's jurisdiction would limit its ability to fill in the gaps in national judicial systems. Moreover, it was the court's responsibility to determine whether conditions existed for a given national legal system to prosecute and try the alleged perpetrators of a crime.

56. As to the crimes to be covered by the statute and their specification, the court should have jurisdiction only over the most serious crimes of concern to the international community as a whole, namely genocide, aggression, serious violations of the laws and customs applicable in armed conflict, and crimes against humanity. Moreover, consideration should be given to extending the jurisdiction of the court to certain treaty-based crimes, such as torture and the offences dealt with by the Convention on the Safety of United Nations and Associated Personnel.

57. His delegation strongly supported the inclusion of aggression among the crimes falling within the jurisdiction of the court; the difficulties in defining aggression for the purposes of criminal law should not be allowed to send a signal of clear regression with respect to the Nüremberg Charter. A proper balance should be found between the essential independence of the court in prosecuting and punishing aggression, and respect for the primary responsibility attributed to the Security Council for the maintenance of international peace and security.

58. The system of conditions for the exercise of the court's jurisdiction envisaged by articles 21 to 23 of the draft statute were, in general, acceptable to his delegation, which considered it as reflecting an attempt to reconcile the quest for consensus with community interests. However, some questions required further reflection, particularly extension of the inherent jurisdiction of the court, the possible initiation of investigation or prosecution by the prosecutor, the opting-in versus the opting-out approach, and the role of the Security Council. He was not in favour of restricting the number of eligible complainant States or of extending the number of States whose consent was required for the exercise of the court's jurisdiction.

59. The paper prepared by the Working Group established by the Ad Hoc Committee served as an excellent basis for the discussion of procedural methods,

particularly the protection of the fundamental rights of the accused. Special attention should be devoted to the question of penalties and respect for the nulla poena sine lege principle. He commended the fact that the draft statute excluded capital punishment.

60. The international conference of plenipotentiaries, which Italy would be honoured to host, should take place by 1997. He supported the prompt establishment of a preparatory committee which should meet for at least six weeks during 1996, ideally in three sessions, with an agenda that was clearly indicated in advance, in order to allow different experts to attend the relevant meetings. The work should concentrate on drafting the articles of the statute and on preparing a consolidated draft text of a convention on the establishment of an international criminal court. The preparatory committee should conclude its work during 1996 and report to the fifty-first session of the General Assembly.

61. Mr. LEGAL (France), commenting on the report of the Ad Hoc Committee (A/50/22), welcomed the fact that an increasing number of countries were in favour of restricting the court's jurisdiction rationae materiae to a "core" of particularly heinous crimes, an approach in line with the original motive for creating a court which would also serve to limit the resultant transfer of sovereignty. With regard to the crime of aggression - which might more accurately be termed the planning, preparation, and launching by individuals of aggression committed by one State against another - the establishment of the court's jurisdiction should be dependent on the prior determination by the Security Council of the existence of an act of aggression.

62. Since the Ad Hoc Committee was in favour of a "core" of crimes, the court's jurisdiction should be "automatic", meaning that after becoming a party to the statute, a State could no longer independently exclude a given crime from the court's jurisdiction. That approach would provide the advantages of simplicity and clarity, while guaranteeing identical jurisdiction of the court vis-à-vis all States parties to the statute, which was an essential foundation of its credibility.

63. One of the pending points, requiring in-depth work, was the attribution of jurisdictions between national courts and the international court, which was the central aspect on which transfers of sovereignty to the international court would depend. His delegation supported making the jurisdiction of the international court concurrent with that of national courts. The natural purpose of national jurisdictions was to prosecute and judge the alleged perpetrators of the crimes in question. However, it therefore followed that if, in the court's opinion, the State responsible for judging such crimes failed to do so or if its judicial authorities demonstrated a desire to protect the offenders, the international court could exercise its jurisdiction and would have primacy of jurisdiction over the national courts concerned.

64. The question of the surrender of the accused to the court was another point that had not yet been examined in any depth. In that context, it would be preferable to refer to the "transfer" of a person at the request of an international judicial body, rather than of "extradition", a procedure which involved two States. The question was not purely one of terminology but

involved the whole issue of relations between the future international court and States parties to the statute, which was still under discussion.

65. Two possibilities had been mentioned regarding further work, the first to extend the mandate of the Ad Hoc Committee, and the second to convene a preparatory committee for the conference of plenipotentiaries. His delegation supported the convening of a preparatory committee which would report to the fifty-first session of the General Assembly. That Committee's mandate should include the drafting, on the basis of the draft statute prepared by the Commission, of agreed guidelines dealing, for instance, with the court's jurisdiction rationae materiae, the establishment of its jurisdiction, and other pending issues, with a view to preparing a consolidated version of the draft. The date of the conference of plenipotentiaries should be fixed on the basis of a very broad consensus among Member States. The establishment of an international criminal court constituted a landmark project and, as such, should reflect true understanding among States.

66. Mr. CHEN Shiqiu (China) said that despite the consensus reached on certain points by the Ad Hoc Committee during its deliberations, major differences remained on questions such as the nature of the future court, the application of the principle of complementarity, the crimes that would come under the court's jurisdiction, the exercise of that jurisdiction, the role of the Security Council and so on. For the time being it would therefore be premature to set a date for a diplomatic conference or to begin preparing for that conference. In the meantime delegations could continue to consider the substantive questions related to the draft statute, giving priority to the most important ones. To that end, China therefore proposed that the General Assembly should extend and expand the mandate of the Ad Hoc Committee.

67. If the court was to have as broad a base as possible and was to function effectively, it would be essential to facilitate participation by the greatest possible number of countries (especially developing countries, which did not always have the necessary human and financial resources) in the work of the Ad Hoc Committee. It would be appropriate to have no more than two sessions per year, each lasting two weeks, and to avoid having more than one working group meeting simultaneously with the plenary.

68. Turning to the report of the Ad Hoc Committee, he said that the main problem to be dealt with was the divergence between national systems of criminal law, which would be further complicated by political, legal and technical questions. The statute for a future international criminal court should embody four basic principles, which he proposed to analyse in turn.

69. The first principle, that of complementarity, was meant to be applied when it was impossible for national courts to formally try someone accused of a serious international crime, although national criminal jurisdiction and the prevailing system of international universal jurisdiction should take precedence. The international criminal court should not supplant national courts, nor should it become a supranational court or act as an appeal court for national court judgements. Any proposal aimed at making it a supranational judicial body would violate the principle of complementarity. It was gratifying to find that the latter had been incorporated in the preamble to the draft

statute, although, regrettably, it had not been fully implemented in the operative part, where some provisions even seemed to contradict it, as in the case of articles 42, 21.1 (a), 25.1, 51.3 (a) and 53.2 (a), which his delegation naturally wished to have corrected.

70. The second principle, that of State consent, was embodied in the draft statute; accordingly, acceptance of the court's jurisdiction would be based on the voluntary consent of the States parties and could not be mandatory. Without the consent and cooperation of the States concerned, especially the State where the offence had been committed and the one where the suspect was present, no international criminal court would be able to carry out its functions. On the question of judicial assistance, the obligation to cooperate stipulated in article 51 was too broad and the element of compulsion was too strong. A case-by-case approach was needed; even States which had accepted the court's jurisdiction should have the right to choose between taking action in a national court and extraditing the suspect.

71. The third principle was that of limited jurisdiction. The jurisdiction of the future court should be limited to the most serious crimes of concern to the international community as a whole. The criteria determining jurisdiction were therefore the universality of the consequences of the crime and the seriousness of the crime. Accordingly, China believed that the Court's jurisdiction should cover genocide, serious violations of the rules of war, and the crimes against humanity listed in article 20 of the draft statute.

72. In the case of the crime of aggression, however, the greatest difficulty lay in how to define it in law, a point on which it had proved difficult to reach agreement. Nor was there agreement on the question of whether individuals could bear criminal responsibility for aggression. As the Charter of the United Nations entrusted the Security Council with the responsibility of determining whether aggression had taken place, the inclusion of that crime in the jurisdiction of the court would have to be handled with the utmost circumspection. Treaty-based crimes (article 20 (e)) likewise needed to be dealt with carefully, as that category of crimes largely overlapped with the category of crimes under general international law and could therefore very well be integrated into the latter. More importantly, some of those crimes did not meet the two aforementioned basic criteria, universality (as in the case of endangering the safety and security of United Nations peace-keeping personnel) and seriousness (as in the case of torture). China was therefore all the more convinced that the court's jurisdiction should be limited to the most serious crimes of genuinely universal concern, which would also prevent the court from being overloaded with cases which could be dealt with by national courts and would alleviate the financial burden on the States parties.

73. The fourth principle was the one expressed in the maxim nullum crimen sine lege, nulla poena sine lege. As the court would operate in the absence of an international penal code, that principle assumed even greater importance; crimes falling under the jurisdiction of the future court would have to be defined clearly, a condition which would not be satisfied by simply invoking the sometimes imprecise definitions of crimes to be found in treaties. By the same token, the law to be applied by the court should be expressly provided for in its statute and should not be simply guided by the rules of the conflict of

laws. Lastly, the draft statute did not have clear provisions for penalties, individual criminal responsibility, procedure and rules of evidence. Some articles would therefore have to be reworked in order to meet the level of precision required by criminal law.

74. China therefore concluded that the principles of complementarity, State consent, limited jurisdiction and nullum crimen sine lege should underpin the operation of the future court. In that case the court would find universal acceptance and would be able to play an effective role. China was ready to work towards that end in the collective interest of the international community.

75. Ms. STEAINS (Australia) said that the success of the Ad Hoc Committee was due to the commitment of delegations to engage in detailed discussion of the critical issues raised by the draft statute for an international criminal court. The establishment of that body was in fact an important step for the international community, and one to which the Australian Government remained committed.

76. After decades of discussion, many questions remained to be resolved, such as the nature of the crimes which would come under the court's jurisdiction, the point at which the court would take over from national authorities, which States would consent to prosecutions, the relations between the organs of the court and national authorities, the procedures in different legal systems for the transfer of suspects and so on. All of those questions required realistic and pragmatic answers, such as the Ad Hoc Committee had already put forward for other issues. For example, it had decided that the court should deal only with the most serious crimes of concern to the international community as a whole.

77. One of the key issues was the relationship between the court and national authorities. The Ad Hoc Committee had used the term "complementarity" to describe the principle which should govern that relationship, but discussion of the matter had not yet been exhausted.

78. Australia believed that the Ad Hoc Committee had completed its task and that the next stage should be the negotiation of the actual text of the statute. Naturally, the negotiations should be based on the draft produced by the International Law Commission and the report under consideration. The report demonstrated that rapid progress could be made if attention was focused on specific issues and the discussions were constructive. For that reason the Ad Hoc Committee should be given a broader mandate. Furthermore, it was time to plan for a diplomatic conference, to be convened in the first six months of 1997 to adopt the statute, following a series of preparatory negotiating meetings in 1996. Governments would then have sufficient time to resolve between themselves the issues arising from the planned establishment of the international criminal court.

The meeting rose at 6.10 p.m.